

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

ERNIE O'DELL, JR.,

Plaintiff,

v.

CIVIL ACTION NO. 5:05-cv-00650

JO ANNE B. BARNHART,
Commissioner of Social Security,

Defendant.

ORDER

Ernie O'Dell Jr., ("plaintiff") brings this action under 42 U.S.C. § 401 et seq., seeking review of the final decision of the Commissioner of Social Security ("Commissioner") denying his application for disability insurance benefits under Title II of the Social Security Act. On August 15, 2005, this matter was referred to the Honorable R. Clarke VanDervort, United States Magistrate Judge, for submission to this Court of proposed findings of fact and a recommendation ("PF&R") pursuant to 28 U.S.C. § 636(b)(1)(B).

On July 5, 2006, Judge VanDervort recommended that this Court grant plaintiff's motion for remand, deny defendant's motion for judgment on the pleadings, and vacate the final decision of the Commissioner. [Docket No. 14]. This Court adopts Judge VanDervort's recommendation in its entirety. The Administrative Law Judge failed to consider plaintiff's "borderline age situation" when applying the medical-vocational guidelines, as required under Daniels v. Apfel, 154 F.3d 1129, 1135 (4th Cir. 1998).

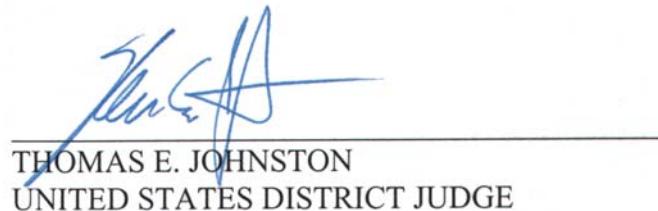
The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. Thomas v. Arn, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the right to appeal this Court's Order. Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); United States v. Schronce, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge VanDervort's PF&R were due by July 21, 2006, pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b). To date, no objections have been filed.

Accordingly, the Court: 1) **GRANTS** plaintiff's motion for remand [Docket No. 9]; 2) **DENIES** defendant's motion for judgment on the pleadings [Docket No. 12]; 3) **VACATES** the final decision of the Commissioner; and 4) **REMANDS** this case to the Commissioner for further findings consistent with this Order and Judge VanDervort's PF&R.

The Court further **DIRECTS** the Clerk to send a copy of this Order to counsel of record, any unrepresented party, and Magistrate Judge VanDervort.

IT IS SO ORDERED.

ENTERED: August 31, 2006



THOMAS E. JOHNSTON
UNITED STATES DISTRICT JUDGE